



IT IS SO ORDERED.
Signed June 24, 2015

A handwritten signature in cursive script, reading "Arthur S. Weissbrodt".

Arthur S. Weissbrodt
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 14-51560-ASW
ANDREW CURTIS WRIGHT,]	Chapter 7
]	
Debtor.]	
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BUSTAMANTE & GAGLIASSO, P.C.,]	Adv. Pro. No. 14-05072-ASW
THE LAW FIRM OF KALLIS &]	
ASSOCIATES, P.C.,]	
]	
Plaintiffs,]	
v.]	Hrg. Date: April 24, 2015
]	Hrg. Time: 3:30 p.m.
ANDREW CURTIS WRIGHT,]	
]	
Defendant.]	
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**MEMORANDUM DECISION RE: PLAINTIFFS' MOTION
FOR JUDGMENT ON THE PLEADINGS**

Before the Court is the motion of Plaintiffs Bustamante & Gagliasso and Kallis & Associates for judgment on the pleadings under Fed. R. Civ. P. 12(c), applicable in bankruptcy via Fed. R. Bankr. P. 7012. Plaintiffs, who are represented by attorneys M. Jeffery Kallis and Steven M. Berki, seek a judgment of nondischargeability against Defendant Andrew Curtis Wright under § 523(a)(6) with respect to attorney's fees awarded by the United

1 States District Court for the Northern District of California in
2 connection with litigation between Plaintiffs' client, Joseph
3 Padgett, and Defendant ("District Court Case"). Defendant is pro
4 se and opposes the motion. For the reasons explained below,
5 Plaintiffs' motion is granted.

6 This adversary proceeding is related to adversary proceeding
7 no. 14-5073-ASW, Joseph Padgett v. Andrew Curtis Wright. Mr.
8 Padgett filed that adversary proceeding seeking a judgment of
9 nondischargeability under § 523(a)(6) of the judgment obtained by
10 Mr. Padgett in the District Court Case in June 2009, and affirmed
11 by the Ninth Circuit Court of Appeals in February 2013.

12 Plaintiffs in this adversary proceeding represented Mr.
13 Padgett in the District Court litigation. On January 10, 2014, the
14 District Court (Judge Edward J. Davila) entered an order denying
15 Plaintiff's Request for Attorney's Fees and Costs. That order
16 provides, in relevant part:

17 The court held a Status Conference on October 11,
18 2013, to address the remanded issues. . . . After
19 reviewing the extensive record in conjunction with the
20 Ninth Circuit's opinion - which in essence requires this
21 court to consider anew the fees and costs issues as it
22 was not privy to the reasons underlying its predecessor's
23 determination - the court determined that (1) Mr.
24 Padgett, now proceeding without counsel, could request
25 fees and costs paid to his prior attorneys, McManis &
26 Faulkner (see Evans v. Jeff D., 475 U.S. 717, 730-31
27 (1986)); (2) his most recent attorneys, M. Jeffrey Kallis
28 and Steven M. Berki, could request fees and costs related
to their former representation of Mr. Padgett (see United
States ex rel. Virani v. Jerry M. Lewis Truck Parts &
Equip., 89 F.3d 574, 578-79 (9th Cir. 1996)), and (3)
Defendants could requests costs pursuant to the remand.
Thus, in an effort to have the issues properly raised
before the undersigned, the court ordered all interested
parties - Mr. Padgett, Mr. Kallis and Mr. Berki, and
Defendants - to file new motions addressing their
respective fees and costs requests on or before December
13, 2013. . . .

1 Mr. Kallis and Mr. Berki filed a Motion for
2 Attorney's Fees and Costs by the deadline imposed by the
3 court. . . . As did Defendants. . . . Mr. Padgett,
however, did not. Nor did he request relief from the
motion deadline.

4 By failing to file a timely motion, Mr. Padgett
5 forfeited his ability to seek fees and costs on his own
6 behalf, inasmuch as a party who fails to comply with a
7 court order faces the dismissal of his or her action. See
8 Fed. R. Civ. P. 41(b); Edwards v. Marin Park, Inc., 356
F.3d 1058, 1065 (9th Cir. 2004). Indeed, the court cannot
proceed on his request without the information necessary
to properly consider it. Accordingly, Mr. Padgett's
request for fees and costs, to the extent sought, is
DENIED.

9 Judge Davila subsequently denied Mr. Padgett's request for
10 leave to file a motion for reconsideration of the January 10, 2014
11 order.

12 Defendant filed for relief under chapter 7 on April 10, 2014.
13 Plaintiffs timely filed this adversary proceeding on July 18, 2014,
14 seeking a determination of nondischargeability under § 523(a)(6) of
15 the attorney's fees awarded by the District Court. At the time the
16 adversary proceeding was filed, the total amount of attorney's fees
17 had not yet been finally determined.

18 On January 16, 2015, this Court orally ruled that the proper
19 amount of attorney's fees to be awarded in connection with the
20 District Court Case should be determined by the District Court. On
21 March 31, 2015, the District Court entered an order granting in
22 part and denying in part the fees and costs requested by the
23 Plaintiffs in this proceeding, Kallis & Associates and Bustamante &
24 Gagliasso, P.C.,¹ In a written order entered March 31, 2015, the
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28 ¹The Bustamante firm is referred to in the District Court's
order as Bustamante O'Hara & Gagliasso.

1 District Court awarded a total of \$471,056.64 plus post-judgment
2 interest, and litigation costs of \$100,000.²

3 If the underlying judgment is nondischargeable, the related
4 attorney's fees and costs are also nondischargeable. Cohen v. De la
5 Cruz, 523 U.S. 213 (1998) (holding that all debt arising from fraud
6 is excepted from discharge under § 523(a)(2)(A), including treble
7 damages, attorney's fees, and costs); In re Suarez, 400 B.R. 732,
8 738 (9th Cir. BAP 2009), aff'd, 529 Fed. Appx. 832 (9th Cir. 2013)
9 (holding that, under Cohen, attorney's fees and costs awarded to a
10 judgment creditor in relation to a debtor's willful and malicious
11 conduct constitute a nondischargeable debt under § 523(a)(6)).

12 Plaintiffs seek judgment on the pleadings on the § 523(a)(6)
13 claim, based on the preclusive effect of the District Court
14 judgment. Mr. Padgett contends that the motion is moot on the
15 grounds that the District Court erred in ruling in its January 10,
16 2014 order that the right to attorney's fees vested in Plaintiffs.
17 The District Court relied on United States ex rel. Virani v. Jerry
18 M. Lewis Truck Parts & Equip., 89 F.3d 574, 578-79 (9th Cir. 1996).
19 Mr. Padgett points out that in Gilbrook v. City of Westminster, 177
20 F.3d 839, 874-75 (9th Cir. 1999), the Ninth Circuit Court of Appeals
21 distinguished Viriani in the context of a fee award in an action
22 under 42 U.S.C. § 1988, holding that, "[i]n the absence of a
23 contractual assignment to counsel, § 1988 requires that attorney
24 fee awards be made directly to the prevailing party, with the
25 ultimate disposition of the award dependent on the contract between
26 the lawyer and the client." Gilbrook, 177 F.3d at 875.

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28 ²The order does not delineate how much is to be awarded to
each law firm; however, to the extent there is any dispute, the
District Court would be the proper forum for resolution.

1 Even if Judge Davila's ruling was incorrect, this Court has no
2 jurisdiction to revisit it. If Mr. Padgett wishes to dispute that
3 ruling, he must do so in the District Court.

4 In the related adversary proceeding, Joseph Padgett v. Andrew
5 Curtis Wright (AP #14-5073) this Court has ruled that the judgment
6 obtained by Mr. Padgett is nondischargeable under § 523(a)(6).
7 Therefore, the attorney's fees and costs awarded to Plaintiffs by
8 the District Court are also nondischargeable under the authorities
9 cited above.

10 Plaintiffs' motion is granted. Counsel for Plaintiffs may
11 submit a proposed form of order.

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13 *** END OF MEMORANDUM DECISION ***
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Court Service List

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Andrew Curtis Wright
P.O. Box 1651
Los Gatos, CA 95031

Jeffrey Kallis
Steven M. Berki
Counsel for Plaintiffs
TO BE SERVED ELECTRONICALLY